

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.1882 OF 2004
IN
APPEAL LODGING NO.1053 OF 1994
IN
WRIT PETITION NO.833 OF 1988

1. Forbes Forbes Campbell & Co.
& anr.

.. Appellants

v/s.

1. Vilasrao Deshmukh,
The Hon'ble Minister for Revenue
& Transport, State of Maharashtra
& ors.

.. Respondents

Mr. S.Venkateshwaran, senior counsel with
Mr.K.R.Shriram for appellants.

Mr. S.K.Nair, A.G.P. for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 6th September, 2004

P.C.

Heard.

2. The appeal against the order dated 22nd
February, 1994 was lodged on 2.12.1994.

3. By this notice of motion taken out by the
appellants, delay in filing the appeal is sought to
be condoned.

4. The learned A.G.P. opposes the notice of
motion. He submits that under Rule 986, the appeal

was liable to be dismissed for want of removal of office objection within thirty days from the date of lodging the appeal.

5. Two reasons persuade us to overrule the objection of the learned A.G.P. Firstly because the appeal was filed way back in the year 1994. There was some confusion about the limitation and it was that in the year 1995, the advocate on behalf of the appellants informed the Prothonotary & Senior Master that the appellants intend to take out the notice of motion for condonation of delay in filing the appeal. The Prothonotary directed that the matter be listed on board, if necessary, after the disposal of intended notice of motion for condonation of delay. The matter remained in cold storage for about nine years and then the present notice of motion had been taken out. No order has been passed by the Prothonotary dismissing the appeal for want of removal of office objection. The procedure is hand maid of justice and not its mistress. The fact of the matter is that the appeal was filed in the year 1994 and by inadvertence the application for condonation of delay could not be filed alongwith the appeal or immediately thereafter. The appeal having already been filed way back in the year 1994, merely because the application for condonation of delay was not filed immediately and has been filed after

nine years, it would not be in the interest of justice to dismiss the notice of motion under Rule 986. Secondly, the respondent has already preferred appeal against the impugned order and that appeal has been admitted and is pending. The present appeal has been preferred by the appellants against the order dated 22nd February, 1994 to the extent it is decided against the appellants. The present appeal is in the nature of cross appeal and the appeal preferred by the respondent No.2 having already been admitted, we are of the view that present appeal also deserves to be heard on merits.

6. We, accordingly, allow the notice of motion and condone the delay in filing the appeal.

7. Office to number the appeal and post it for hearing alongwith appeal No.794 of 1994 after two weeks.

8. Notice of motion stands disposed of.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)